

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Leo Lionel Alvarez,

Petitioner

v.

Steve B. Wolfson, et al.,

Respondents

Case No. 2:24-cv-01255-CDS-BNW

Order Denying Petitioner's Application to
Proceed *in Forma Pauperis* and Granting
Motion for Appointment of Counsel

[ECF Nos. 1, 1-2]

This action is a petition for a writ of habeas corpus, under to 28 U.S.C. § 2254, by Leo Lionel Alvarez, an individual incarcerated at Nevada's High Desert State Prison. Alvarez has filed an application to proceed *in forma pauperis* (ECF No. 1), a petition for writ of habeas corpus (ECF No. 1-1), and a motion for appointment of counsel (ECF No. 1-2).

The information in Alvarez's application to proceed *in forma pauperis* (ECF No. 1) shows that he is able to pay the \$5 filing fee for this action. Therefore, the application will be denied. The court will, however, defer the matter of payment of the filing fee until after appointed counsel appears for Alvarez.

The court has examined Alvarez's habeas petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and determines that it merits service upon the respondents. The court will order the petition served upon the respondents, and will order the respondents to appear, but will not require any further action on the part of the respondents at this time.

State prisoners not sentenced to death and applying for habeas corpus relief in federal court are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam)). The court may, however, appoint counsel at any stage of the proceedings if the interests of justice so require. See 18 U.S.C. § 3006A; *see also* Rule 8(c), Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. The court determines that the interests of justice call for appointment of counsel in this case. The

1 court will grant Alvarez's motion for appointment of counsel and will appoint the Federal Public
2 Defender for the District of Nevada (FPD) to represent Alvarez.

3 IT IS THEREFORE ORDERED that the petitioner's application to proceed *in forma*
4 *pauperis* [ECF No. 1] is DENIED.

5 IT IS FURTHER ORDERED that the petitioner's motion for appointment of counsel
6 [ECF No. 1-2] is GRANTED. The Federal Public Defender for the District of Nevada is appointed
7 to represent the petitioner. If the FPD is unable to represent the petitioner, because of a conflict of
8 interest or any other reason, alternate counsel will be appointed. Counsel will represent the
9 petitioner in all federal court proceedings relating to this matter, unless allowed to withdraw.

10 IT IS FURTHER ORDERED that the Clerk of the Court is directed to electronically
11 serve upon the FPD a copy of this order, together with a copy of the petition for writ of habeas
12 corpus (ECF No. 1-1).

13 IT IS FURTHER ORDERED that the FPD will have 30 days from the date of this order to
14 file a notice of appearance, or to indicate to the court its inability to represent the petitioner in
15 this case.

16 IT IS FURTHER ORDERED that the requirement that the petitioner pay the filing fee
17 for this action is suspended. The court will set a deadline for the petitioner to pay the filing fee or
18 to file a new application to proceed *in forma pauperis* after appointed counsel appears for him.

19 IT IS FURTHER ORDERED that the Clerk of the Court is directed to add Aaron Ford,
20 Attorney General of the State of Nevada, as counsel for the respondents and to provide the
21 respondents an electronic copy of all items previously filed in this case by regenerating the Notice
22 of Electronic Filing to the office of the Attorney General only.

23 IT IS FURTHER ORDERED that the respondents will have 30 days from the date of this
24 order to appear in this action. The respondents will not be required to respond to the habeas
25 petition at this time.

26 Dated: August 8, 2024

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Cristina D. Silva
United States District Judge